IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 18214 of 2006(R)

PETITIONER:

K.N.KRISHNAN,
S/O.KANNATH NARAYANAN EZHUTHASSAN,
MUTHUVARA DESOM,PUZHAKKAL VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.JIJO PAUL.

RESPONDENT:

P.N.NARAYANAN NAMBISSAN,
PAPPATH PUSHKARATH,PUZHAKKAL VILLAGE,
DESOM, THRISSUR TALUK.

BY ADV. SRI.N.P.SAMUEL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.18214/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER DTD. 02/12/2004 IN E.A. NO. 2335/2004 IN E.P. NO. 952/2002 IN O.S. NO. 2340/98 OF THE PRINCIPAL MUNSIFF COURT, THRISSUR.

EXT.P.2: COPY OF THE MEMORANDUM OF APPEAL FILED BY THE PETITIONER IN C.M.A. 80/2005 BEORE THE SUB COURT, THRISSUR DTD. 02/06/2005.

EXT.P.3: COPY OF THE ORDER DTD. 02/09/2005 BY THE DISTRICT COURT, THRISSUR IN C.M.APPEAL NO. 80/2005.

RESPONDENT'S EXHIBITS:

EXT. R.1.A: COPY OF THE SALE CERTIFICATE ISSUED BY THE MUNSIFF COURT, THRISSUR AS PER ORDER IN E.P. 952/02 IN O.S. 2340/98 DTD. 10/03/2005.

EXT.R1.B: COPY OF THE DELIVERY WARRANT ISSUED BY THE MUNSIFF COURT, THRISSUR ON 23/11/05.

EXT.R1.C: COPY OF THE SYMBOLIC DELIVERY RECEIPT EXECUTED BY THE COURT AMEIN AND SIGNED BY THE RESPONDENT DTD. 24/11/2005.

EXT.R1.D: COPY OF THE ORDER IN E.A. NO. 929/2005 IN E.P. 952/02 IN O.S. NO. 2340/98 DTD. 30/11/2005 OF THE MUNSIFF COURT, THRISSUR.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

.....

W.P.(C)No.18214 OF 2006

.....

DATED THIS THE 3RD JULY, 2007

J U D G M E N T

Ext.P1 order passed by the execution court on an application to set aside sale filed by the petitioner-judgment-debtor under Order XXI Rule 90 C.P.C. and Ext.P3 judgment of the lower appellate court confirming Ext.P1 are under challenge in this Writ Petition under Article 227 of the Constitution initiated by the judgment-debtor.

2. I have heard the submissions of Mr.Jijo Paul, counsel for the petitioner and Mr.N.P.Samuel, counsel for the respondent.

3. On reading through Exts.P1 and P3, I do not find any infirmity about those orders as to justify interference under the supervisory jurisdiction of this Court under Article 227. The contention which was prominently urged before me by Mr.Jijo Paul was that the execution court had not fixed a reserve price for the properties even though leave was granted to the decree-holder for purchasing the properties in auction. The above contention cannot receive acceptance, in view of the obvious position that the decree in question was not a mortgage decree. The draft sale proclamation and ultimate sale proclamation fixing the upset price for the properties were issued and the sale was conducted on the basis of that upset price.

4. The learned counsel would then submit that the petitioner has already deposited Rs.50,000/- towards the decree-debt as directed by this Court on 12.7.2006 and that he is willing to deposit the entire balance amount and whatever costs incurred by the respondent on account of the sale. My attention was drawn by the learned counsel to the stand taken by the respondent's counsel before the court of appeal in Ext.P3. When the attention of Mr.Samuel was drawn to the stand taken by his counter-part in the lower appellate court, he would say that much water has flowed under the bridge since then. According to him, subsequently symbolic delivery of the property was taken from the petitioner as per Ext.R1(d) and on the basis of Ext.R1 (d) a suit for partition of the separate share of the respondent is instituted. Had it not been for the subsequent events brought to my notice by Mr.Samuel, I would have been inclined, on considerations of justice, to direct the respondent to receive the entire decree-debt together with the expenses incurred by the respondent in connection with the sale and also a reasonable amount by way of compensation in full and final settlement of his claim against the petitioner. But in view of the subsequent events, I am unable to do that.

The Writ Petition will stand dismissed.

(PIUS C.KURIAKOSE, JUDGE)

tgl